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IN THE

Supreme Court of The United States

OCTOBER TERM, 1943.

320 US #47

Nos. 241 -242 UND-UNI

UNDERWRITERS' LABORATORIES, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Underwriters' Laboratories, Inc., prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Seventh Circuit entered herein on May 7, 1943.

There were two docket numbers in the court below, presenting the same issue for succeeding years. The circuit court consolidated them for hearing and decision (R. 198) and rendered one opinion and two judgments (R. 207-213).

The case was heard below upon a printed record which included stipulation of facts and testimony, and upon exhibits which, by order of the circuit court (R. 198) were transmitted to it in the original.

The record in this Court consists of the printed record, which includes proceedings in the circuit court; and of the original exhibits, which were certified and transmitted to this Court by order of the court below (R. 214).

OPINIONS BELOW.

The opinions of the United States Board of Tax Appeals (now the Tax Court of the United States) are reported in 46 B.T.A. 464 (R. 167-192). The opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet officially reported, is printed at pages 207 to 212 of the record herein.

JURISDICTION.

The orders of the United States Circuit Court of Appeals were entered on May 7, 1943. The jurisdiction of this court is invoked under section 240 of the Judicial Code, as amended, being section 347 of Title 28, U.S.C.A.

QUESTION PRESENTED.

Whether the Circuit Court of Appeals properly approved the holdings of the Board of Tax Appeals that during the taxable years in question the petitioner was not entitled to exemption as a scientific, educational, and charitable organization under section 101(6) of the Revenue Acts of 1936 and 1938, and was not entitled to exemption as a business league under section 101(7) of those Acts.

STATUTES AND REGULATIONS INVOLVED.

The Revenue Act of 1936 provides as follows (the corresponding sections of the Revenue Act of 1938 and of the Internal Revenue Code are the same):

> SEC. 101. EXEMPTIONS FROM TAX ON CORPORATIONS.
>
> The following organizations shall be exempt from taxation under this title—
>
> (6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.
>
> (7) Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The Treasury regulations applicable to these subsections of section 101 are set forth in the Appendix, *infra*, pp. 30-31.

STATEMENT OF THE MATTER INVOLVED.

Underwriters' Laboratories, Inc., is a non-stock, not-for-profit corporation organized under the laws of Delaware.

Petitioner's purpose is the diminution of losses from fire, crime and casualty. It does research on hazards which cause such losses and protection against such hazards, and carries on a comprehensive program of informing the public on these hazards and their control. An important feature

of this educational process of advising the public on hazards is petitioner's work in testing manufactured articles for compliance with its hazard-protection standards; it authorizes the use of its "inspected" label on products which it finds to comply with its standards, and encourages the use of such products as a means of diminishing losses from hazards. The general public is the paramount and direct beneficiary of these activities.

More specifically, petitioner's activities fall into four general classifications:

(1) Petitioner does abstract (or pure science) research and investigation on hazards to life and property, and protection against such hazards.

(2) Petitioner formulates and publishes standards or requirements for the design, construction and performance —from the standpoint of safety from hazard or adequacy of protection against hazard to life and property—of fire protection equipment and materials, electrical equipment, safety devices, automotive equipment, burglary protection devices, appliances for use with inflammable or explosive substances, and the like. These standards are widely recognized.

(3) Manufacturers of many devices and products which have a hazard aspect submit them to petitioner for independent tests by it to determine whether they meet petitioner's standards and requirements. If petitioner finds that they do meet its standards, it names such products in its "lists of inspected equipment", and it authorizes their labelling "Underwriters' Laboratories Inspected".

(4) Petitioner publishes the results of some of its abstract researches in bulletins of research and in data cards. The standards and specifications which it has formulated are made available to anyone who may be interested. The lists of inspected products, as are also the

bulletins of research and the data cards, are distributed to large mailing lists which include manufacturers, federal, state and municipal authorities, technical societies and trades, insurance organizations, architects and representatives of property owners. In addition petitioner carries on various other informational activities.

All of these publicizing activities are intended to enlighten and inform the public on hazards of fire, crime and casualty; to advise the public of the significance of the mark of petitioner's inspection on products; and to encourage the utilization of products which petitioner has tested, in order to diminish losses from fire, crime and casualty. None of petitioner's publications or information goes particularly to members; in fact, the evidence does not show that any of petitioner's publications whatever with the sole exception of the data cards goes to its members.

Petitioner's work and information have no direct utility or application in writing insurance or determining rates or adjusting losses. Such work and information do have a direct usefulness in informing the public on hazards to life and property and on protection against such hazards—in particular, petitioner's testing and inspecting and approving of devices and products which have a hazard aspect serve to furnish the users of such items with information on them which such users could not readily obtain for themselves.

Petitioner is sponsored by the National Board of Fire Underwriters, a "trade association" of stock fire insurance companies; the Commissioner of Internal Revenue has determined that the National Board is exempt from tax under section 101(7).

Petitioner is organized and operated for scientific, educational and charitable purposes, and none of its income or property can go to its members. In this connection, its charter provides, in Article 4:

> * * * No distribution of any of its property, assets or income, or of any portion of them, however, or wherever acquired, shall ever be made to or among any of its members, either by way of dividends or distributions, in liquidation or otherwise, but all of its property shall be considered and deemed to have been, and hereby is, dedicated to the accomplishment or furtherance of its objects and purposes. In the event of a dissolution of the corporation, its property and assets shall be transferred in trust for the furtherance of the objects of its incorporation in such manner and under such conditions and to such persons, firms, associations or corporations as its membership, by majority designation, may appoint. (Exhibit A to Stipulation of Facts.)

In denying exemption under sections 101(6) and 101(7) of the Revenue Acts of 1936 and 1938, the majority opinion of the Board of Tax Appeals held that earnings inured in the form of benefits moving especially to members, and the court below agreed. Such a holding was wholly without support in the evidence, as we demonstrate at p. 25 *infra*, and as was pointed out in a vigorous dissenting opinion in the Board, where it was said:

> No cash earnings ever inured or could inure to the benefit of any private stockholder or individual. It is said, however, that the profits inure to the benefit of the insurance companies and manufacturers, since they are used in expanding the plant which performs services for the insurance companies and manufacturers for which they would otherwise have to pay. In the first place, there is no evidence to support this argument and I don't think we have a right to speculate that the services performed by the petitioner relieved the members or the manufacturers from "making such tests in their own behalf and were of great benefit to them and saved them considerable expense and effort." The manufacturers were not "private stockholders or individuals" within the meaning of the act. The benefits to insurance companies inured to nonmember in-

> surance companies, the Federal Government, states, municipalities, and the public, as well as to the members. General benefits of that kind are inherent in many cases that arise under this statute and their existence does not defeat the right to exemption. *United States* v. *Proprietors of Social Law Library, supra.* Once the broad public, and charitable purpose of the petitioner is recognized, the incidental benefits pale into relative insignificance. (R. 190).

If petitioner's members benefited at all—and it was not shown that they did—such benefit was purely incidental to the general public benefit.

Petitioner's income is derived from charges for testing and inspecting products at the request of manufacturers. These charges are fixed on a noncompetitive, noncommercial basis; if there is an excess of receipts over cost, some of that excess is refunded to manufacturers who have paid charges. In 1937, petitioner received some $1,820,000 from manufacturers; it refunded over $80,000 to them; and it showed net income of some $183,339 before provision for taxes, reserves or expansion. In 1938, it received some $1,688,000 from manufacturers; refunded more than $25,000; and showed a net income of $105,000 before providing for taxes, reserves or expansion.

Despite the fact that there would be no point to the exemption provision if it did not exempt corporations which operated at a profit, the Board and the court below predicated their denial of exemption in large part on their holding that petitioner operated so as to make a profit.

Also relied on below in denying exemption were the holding that petitioner's testing services were available to manufacturers only and it would not test for individual purchasers of products; and the holding that petitioner cultivated public good will and confidence in its work and solicited testings from manufacturers. The denial of ex-

emption on the basis of these holdings and of the holdings previously mentioned is in conflict with decisions of the Supreme Court and of other circuit courts. The decision herein raises questions of great importance which have not been and which should be passed upon by this Court.

REASONS FOR GRANTING THE WRIT.

1.

In holding that exemption is to be denied because petitioner conducted business activities at a profit, the decision of the court below is in conflict with the decision of this Court in *Trinidad* v. *Sagrada Orden de Predicadores,* 263 U. S. 578, and is also in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Roche's Beach, Inc.,* v. *Commissioner,* 96 F. 2d 776, and with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Koon Kreek Klub* v. *Thomas,* 108 F. 2d 616.

Petitioner's testing and inspection work in the years in question left it with a profit. Part of that profit was refunded to manufacturers and part remained for petitioner's purposes. The existence of a profit was strongly relied on by the Board (R. 180-181) and by the circuit court (R. 210) as a basis for denial of exemption.

Such a holding is in conflict with this Court's decision in the *Trinidad* case, *supra.* In that case a Philippine religious corporation claimed that it was within statutory provisions exempting from tax any corporation "organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual." The Philippine tax collector contended that it was not "operated exclusively" for those purposes and was not exempt. The corporation used its property to produce

rents, dividends and interest and traded in wine and chocolate at a profit. This Court held the organization exempt and interpreted the statute in the following language:

> * * * Two matters apparent on the face of the clause go far towards settling its meaning. First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, and yet have a net income. Next, it says nothing about the source of the income, but makes the destination the ultimate test of exemption.
>
> Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on with income received from properties dedicated to their pursuit. This is particularly true of many charitable, scientific and educational corporations and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted.

In *Roche's Beach, Inc.*, v. *Commissioner, supra,* the Second Circuit held exempt from tax under section 101(6) a corporation which was organized to operate a commercial bathing beach and pay all of its income to a charitable foundation. That court said of the statutory provision in question (96 F. 2d 776, at 778):

> This does not mean that to come with the exemption a corporation may not conduct business activities for profit. The destination of the income is more significant than its source.

And in *Koon Kreek Klub* v. *Thomas, supra,* the Fifth Circuit reversed the district court and held the organization

exempt under section 101(9) as a club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes. It was a fishing and hunting club which owned a large tract of land. It had a small income from the grant of grazing privileges and a substantial income from an oil lease on its lands. The income from the lease was used to reduce the mortgage on the club property; apparently the other income went for general club expenses. The circuit court said (108 F. 2d 616, at 618):

> Indeed, if the club could be made self-sustaining by grazing fees, guest fees, and other perquisites, its operations being for the stated purposes, its exempt status would not be affected.

In the case at bar, three members of the Board of Tax Appeals, including its chairman who wrote the dissenting opinion, recognized that to deny an exemption would be to refuse to follow the decision of this Court in the *Trinidad* case (R. 189). The dissenting opinion further recognized that the existence of a profit is not controlling, saying (R. 189):

> Obviously, the petitioner operated at a profit, but there would be no point to the exemption if the statute did not exempt corporations which operated at a profit.

2.

The Board held that petitioner's earnings inured to members in the form of benefits to them from petitioner's work, and the court below affirmed (R. 182-183). The evidence showed clearly (as we point out elsewhere in this petition) that members received no benefits that were not received equally by the public. Moreover, any benefits to members or others were incidental to petitioner's general public purpose of informing and protecting against hazards. But in

any event, the holding, that receipt of benefits—so clearly incidental to a broad public benefit—constituted such inurement to private individuals as to warrant denial of exemption, is in conflict with the decision of the Circuit Court of Appeals for the First Circuit in *United States* v. *Proprietors of Social Law Library*, 102 F. 2d 481. In that case the government contended that because the earnings of the library were used for its improvement and maintenance they inured to the benefit of the members who were thereby better served by the library. The court pointed out that though individual lawyers might receive direct benefits in their business from the acquisition of knowledge contained in the books of the library, nevertheless the public also received both a direct and an indirect benefit from the better administration of the law by reason of the knowledge thus obtained. It said at 484:

> The contention of the government that the net earnings of the Social Law Library inure to the benefit of the shareholders or individuals, because any improvements of the Library rendering it more serviceable to its members is of special benefit to them; but though every improvement in a charitable institution confers additional benefits on those using it, or availing themselves of its benefits, such benefits have never been considered as taking the institution out of the class of charitable institutions because it has enabled it to do better educational, literary or charitable work, or because it resulted in distributing its benefits among private shareholders or individuals.

Below, it was held that information developed by Underwriters' Laboratories was related and germane to business endeavors of its members; that because of their business interests it gave them a peculiar and additional benefit. Similarly, the use of the Social Law Library by practicing attorneys was a very direct benefit to those attorney members. But the First Circuit in that case properly valued

the vital consequence to the public and found that benefits to members were subordinate. The Seventh Circuit's failure to recognize that this petitioner's service to the public overshadows any incidental benefit to members is directly in conflict with the *Social Law Library* decision.

In the case at bar, there was some suggestion of benefit to manufacturers in perfecting their products and perhaps a resulting benefit to the public by reason of such progress (R. 185). But even if such a benefit were pertinent to the question of inurement of earnings, the *Law Library* case thus makes it clear that it is not a bar to exemption. It is to be observed, further, that in the *Law Library* case the benefit to the public followed upon and was the result of direct benefit to members—but exemption was not thereby defeated. In the case at bar, there is no such roundaboutness or indirectness of benefit to the public; diminution of losses and protection against hazards benefit the public before they can benefit insurance interests.

This holding likewise conflicts with the holding of the Circuit Court of Appeals for the First Circuit in *Santee Club* v. *White,* 87 F. 2d 5, and with the holding of the Circuit Court of Appeals for the Fifth Circuit in *Koon Kreek Klub* v. *Thomas,* 108 F. 2d 616. In those cases, hunting and fishing clubs derived income from the sale of club real estate, from grazing fees and from oil leases. The income was used for general club purposes or to pay off a mortgage. It was contended that the members benefited from reduction of dues, diminution of liability, or better services; and that the income thereby inured to the benefit of members. In the *Santee Club* case, the court said, at p. 7:

> No part of the profit on the sale of real estate in question inured to the benefit of the Club's shareholders except through their use of the Club facilities, which is clearly not the benefit referred to in the exempting clause of the statute.

In the *Koon Kreek* case the court referred to the government's contention that the reduction in mortgage liability necessarily resulted in a reduction in dues and assessments, or liability therefor, and therefore resulted in a benefit to the shareholders, and said at p. 618:

> Viewed in the light of the statute, this contention refutes itself. The obvious answer is that the exemption applies to profits so long as they are retained by the organization or used to further the purposes which are made the basis of the exemption, and are not otherwise used for the benefit of any private shareholder.

3.

The decision of the court below is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in *Crooks* v. *Kansas City Hay Dealers' Association*, 37 F. 2d 83, where the association was held exempt under the business league provisions of the statute, section 101(7). The association was composed of persons in the business of buying and selling hay; it employed men to inspect, weigh, plug and watch cars of hay which were bought, sold, or consigned by or to members of the association. Fees were exacted from the shippers for these services and used to pay employees; in some years there was a profit. That court sustained the association's contention that the services were merely incidental to its purposes of maintaining an honest market for buying and selling hay; that honest weights, honest inspection, and fair dealing were essential to the maintenance of the market's integrity.

Similarly, in the case at bar, petitioner's testing and inspecting work and its other activities are essential components of its purpose to advise and safeguard the public with respect to certain hazards. Any proceeds from petitioner's work are used exclusively in furthering that purpose.

4.

A holding on which the Board relied and which the circuit court stressed in denying exemption was that petitioner did testing and inspection work for manufacturers only; that it did not test for individual consumers. Denial of exemption on this ground is in conflict with the decision of the First Circuit in *United States* v. *Proprietors of Social Law Library,* 102 F. 2d 481.

An important feature of petitioner's work is testing manufactured articles for their performance under hazard conditions. If the article satisfactorily measures up to petitioner's standards and if subsequent inspections of factory output show compliance with the standards, petitioner "lists" the article and authorizes it to be marked so as to indicate that petitioner has inspected it. Petitioner distributes its lists of inspected products and encourages the public to use articles thus tested and inspected, in order to minimize the danger of fire, burglary, accident, etc. Effective operation under such a plan requires that petitioner's activities be limited to articles submitted by their manufacturers to be tested and listed. Testing of an individual article for a prospective purchaser might benefit that consumer but it would result in no publishable findings on the merits of an article. Testing at the manufacturing level rather than at the retail level obviously produces the greatest good for the greatest number. Nevertheless, the circuit court in this case said at R. 210:

> Except in a very few instances, the testing service is rendered only to manufacturers. An individual purchaser of a piece of merchandise cannot get a test under any circumstances. In other words, the testing service is for the manufacturers who pay the ample fees that give the petitioner its large profits.

A parallel situation was involved in the decision of the First Circuit in the case of *United States* v. *Proprietors*

of Social Law Library, supra. There a law library was open only to its "proprietors" and "subscribers", and to certain state and federal officials. Law students and the general public were excluded therefrom, because a crowded condition in the library would seriously interfere with its use. The government took the position under section 101(6) that, since the use of the library was restricted to only a small proportion of the public, the library should be denied an exemption from taxation. The circuit court quite properly rejected the government's contention and allowed an exemption on the theory that the greatest good to the public resulted from such restriction.

The public gets the greatest benefit from Underwriters' Laboratories because its testing facilities are restricted to manufacturers. Inspection furnished indiscriminately for the general public would overcrowd the facilities of the laboratories and produce no commensurate benefit. In view of these facts, the restriction is perfectly reasonable, and in denying an exemption on this ground the decision of the Seventh Circuit is in conflict with the decision of the First Circuit.

5.

The denial of exemption to petitioner on the holding that it cultivated public interest in its work and public confidence in its findings and in the results of its testing and inspection, and that it solicited business from manufacturers (R. 179-180), raises a question of such great importance in the administration of the tax law that it should be reviewed and passed on by this Court.

The Board's opinion, which was affirmed by the court below, holds that the efficiency of petitioner's testing and inspection work was made known to the public in order to inculcate a feeling of confidence in petitioner's labels ap-

pearing on manufactured products offered for sale; and holds that petitioner solicited business from manufacturers. These are among the holdings on which it relied in denying exemption. Certainly if petitioner is to accomplish its purpose of minimizing certain hazards by encouraging use of hazard-tested manufactured products, it would of necessity have to do two things: (1) it would have to educate the public on those hazards and on the import of its labels with respect to hazards; and (2) it would have to encourage manufacturers to build their products so they would comply with petitioner's standards, and to have petitioner test them for such compliance. When the Board's holdings are viewed in the light of the fact that such activities help to further petitioner's broad beneficial purposes, they take on a totally different significance.

The Board and the circuit court, by relying on these findings as a basis for denial of exemption, have raised a question of great importance which should be passed on by this Court, namely, *is the creation of good will or the solicitation of the use of its facilities, by a scientific or educational or charitable organization, to be the basis of denying an otherwise allowable exemption?* For example, most institutions of higher learning attempt by various methods to create good will and interest in education, and they send out agents and distribute literature to encourage students to enroll for study in their classes. This is all part of the general plan to make higher learning available to the public at large. If the practice of informing the public on the need and advantages of higher education, and of inducing students to enter these institutions will result in denial of exemption from taxation, then all previously-held ideas on the point are erroneous. Yet these are the implications of the case at bar. On the basis of the decision, the tax authorities might well take the position that practically every educational institution is to be denied exemption. The case has

raised such a serious question in the administration of the tax law that this Court should review it.

6.

In affirming the decision of the Board, the court below improperly failed to reject findings and conclusions of the Board which are unsupported by or contrary to the evidence. It is submitted that the action of the court below was such as to call for review by this Court. Cf. *Helvering* v. *National Grocery Co.*, 304 U. S. 282, and *Helvering* v. *Chicago Stock Yards Co.*, 318 U. S. 693, where this Court granted certiorari in the converse of our situation and reversed decisions of circuit courts for their improper rejection of findings of the Board which were supported by the evidence.

The Board made two ultimate fact conclusions on which it predicated its denial of exemption under either section 101(6) or section 101(7). Those conclusions are:

(A) Petitioner carried on commercial testing work for manufacturers for the purpose of making a profit (R. 181); and

(B) Petitioner's earnings inured to the benefit of its members (R. 183).

The Board's primary findings leading to the first major fact conclusion—operation of a commercial testing laboratory for profit—were these:

(1) Manufacturers submit their products to petitioner for test and inspection because it is advantageous for them to do so. Petitioner publicizes its work and the lists of inspected products, informing the public on the significance of its labels, calling attention to inspected products, and inculcating a feeling of confidence in petitioner's labels appearing on products offered for sale. All this creates

sales appeal for articles bearing the mark of petitioner's inspection (R. 179).

(2) Petitioner's activities make its contracts attractive to manufacturers. "Petitioner *in other ways* solicited business from manufacturers." (R. 179-180). (Italics supplied.)

(3) Petitioner does scientific and educational work; such activities are elements in the performance of its contracts with manufacturers (R. 180-181).

(4) Petitioner realizes substantial profits even after refunding some of the fees which have been paid by manufacturers. Since it does not establish prices which would not result in such profits, it is reasonable to assume that it intends to operate for profit. (R. 180-181).

Some of these findings are contrary to the evidence*, but a factor at least equally important in the Board's erroneous conclusion is that the Board ignored substantial and uncontradicted relevant evidence and failed to make findings called for by such evidence. With its approach to the issue thus founded on incomplete findings, it is not surprising that the Board drew the wrong inference and put the wrong interpretation on what it did find.

The Board belittles the contribution to pure knowledge in petitioner's independent research on protection against hazards, as exemplified in the Bulletins of Research; and the Board's only mention of petitioner's work in formulat-

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*For instance, the Board said that petitioner, "in other ways solicited business from manufacturers," but did not say what those "ways" were. Witness Small, president of petitioner, testified, "We do not, and never have, solicit manufacturers to have tests of their products made." (R. 34). Witness Mallalieu, who had been associated with petitioner for thirty years as director or trustee (R. 41), testified to the same effect (R. 44). This testimony was not contradicted, nor even called into question.

ing standards is a statement wherein it confuses the standards with the Bulletins. It said, "The petitioner also publishes and distributes various research bulletins pertaining to the standards and methods used in tests made by it. The contents of most, if not all, deal with data pertaining to tests made for manufacturers." (R. 173-174) The Bulletins of Research are in evidence and speak for themselves. They show extensive work in pure research. The standards are set up by petitioner as guides to the goal of safety from hazard or adequacy of protection against hazard. Certainly the standards deal with data pertaining to tests, though not tests which have been made for manufacturers; they are the standards against which manufactured articles are measured. Formulation of the standards is a step toward petitioner's avowed goal and testing by the standards is the next step. The Board's findings on both of these lines of work were glaringly contrary to the evidence and the circuit court should have rejected them.

Most serious, the Board utterly ignored the public purpose underlying all of petitioner's work—research, standards, testing and informational—the purpose to advise and safeguard the public so that hazards to which people and property are subjected would be avoided or minimized. As the minority opinion in the Board put it, "The activities of the petitioner were directed to a very broad purpose, to the investigation and study of the relation of various materials, devices, systems, conditions, etc., to certain life and property hazards, in an effort to ascertain and publish for public use and benefit information that would advise the public how best to avoid or minimize such hazards. That, to my mind, is a charitable purpose. Without that purpose, in fact unless it was successful in that purpose, the petitioner could in nowise serve any other purpose. That is, any benefit which it may have been to the manufacturers or to insurance companies necessarily depended upon the

accomplishment of this broad, general purpose of serving the public." (R. 189)

All of the evidence points irresistibly toward the broad public service purpose underlying petitioner's every activity, but the Board made no finding thereon except as the finding of a purpose to serve manufacturers and members negatives the broader purpose. But it is hardly reasonable to conclude that petitioner functions for the benefit of manufacturers or for the purpose of doing business with them. Such a hypothesis leaves too many factors and aspects of petitioner's work unexplained. The whole course of its activities is compatible with a purpose to educate the public on hazards and how to minimize them, and is not compatible with a purpose to see that manufacturers profit by selling hazard protection.

To say, as did the Board at R. 185, that public benefit is the general effect of science, discovery, and invention, "but statutory exemption of business concerns engaged therein and profiting therefrom is not justified on the ground that the public shares in the benefits resulting therefrom," is to miss the question. Petitioner has no product to perfect and sell and make a profit. And all the evidence makes it clear that petitioner did not do research, discovery and invention merely to help manufacturers perfect their products and sell them and make profits; petitioner polices industry's products and examines them to see if they meet petitioner's standards for safety or adequacy of protection—to see whether industry's research and discovery and invention have achieved a result which petitioner deems satisfactory from the standpoint of the user.

Since petitioner has no stockholders to satisfy and since its charter prohibits distribution of any earnings, petitioner has no motive to make a profit from its work except the desire to perpetuate itself and continue its work. That desire is not commercial. And the cases make it clear

that the statute "recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, and yet have a net income. * * * it says nothing about the source of the income, but makes the destination the ultimate test of exemption." Making its properties productive so that the income may be used to further its purposes does not alter or enlarge the purposes for which the corporation is organized and created. *Trinidad* v. *Sagrada Orden*, 263 U. S. 578. "The mere fact that an association of this character may receive some income and arrange that income so as to carry on its work is no proof that it is organized for the sake of profit." *Crooks* v. *Kansas City Hay Dealers' Association*, 37 F. 2d 83, 85.

Of course it is true that there is a demand for hazard-tested articles and that petitioner's publicizing—its education of the public—contributes to that demand. The recognition of petitioner's standards in Federal specifications and in the laws or regulations of many state and municipal authorities (R. 36, 38) likewise contributes to the demand for products which have been found to meet those standards. If it were not so, petitioner's work would be wasted. Unless the public was educated to guard against hazards and to utilize hazard-free products, petitioner would fall short of its objective. But there is no reasonable basis for concluding therefrom that petitioner exists to help manufacturers sell. A much more direct and less cumbersome medium could be organized if that were the purpose.

The Board spoke of "substantial profits." The circuit court used the term "ample fees" three times and the term "large profits" twice in scarcely more than half a page (R. 209-210). But the evidence showed that in 1937 petitioner reported net income slightly more than 10% of gross receipts (after refunds to manufacturers) and in 1938 re-

ported net income slightly more than 6% of such receipts. This was before provision for taxes, for expansion, or for reserves to carry the work through lean years. In other words, for $100 of fees collected, petitioner paid its costs of operation and other expenses and had $6 to $10 left—before income taxes or reserves. Does this look like substantial profits?

The Board's ignoring of petitioner's public benefit objective distorted the picture and led to its erroneous conclusion. If we restore that public benefit factor to the primary findings made by the Board and view those findings in the light of that objective, we arrive at a sounder, more reasonable and more logical conclusion. Compare the Board's findings with the following primary findings which are clearly required by the evidence:

(0) Petitioner's objective is investigation of hazards and informing the public on how to control them; it supplies information and service which the consumer could otherwise obtain only with great difficulty, if at all. (The Board erroneously failed to make this finding.)

(1) Petitioner's work is effective; i. e., it stimulates the use of products which petitioner has found to meet its standards of safety. (Correcting the Board's primary finding No. 1 at p. 17 *infra*).

(2) Its activities make petitioner's mark of approval desirable to manufacturers. (Correcting the Board's primary finding No. 2 at p. 18 *infra*).

(3) Petitioner's scientific and educational work, including its testing of products submitted by manufacturers and publicizing the results of the tests and the significance of its labels, are for the performance of its objective to inform the public and diminish losses from hazards. (Correcting the Board's primary finding No. 3 at p 18 *infra*).

(4) Petitioner had earnings. They were used in the furtherance of its objectives and could not be distributed or diverted. (Correcting the Board's primary finding No. 4 at p. 18 *infra.*)

Instead of the Board's conclusion that petitioner carried on commercial testing work for manufacturers for the purpose of making a profit, these findings—inexorably demanded by the evidence—clearly lead to the conclusion that:

> Petitioner's work in testing products against its standards and advising the public what products have been satisfactorily hazard-tested is part of its scientific and educational and charitable program, which is self- sustaining.

The Board's error in failing to reach such a conclusion so unavoidably required by the evidence, and the circuit court's error in failing to reject the Board's erroneous conclusion on this issue require review by this Court.

The statutory test for exemption has two aspects. Not only must there be organization and operation exclusively for certain purposes, but no part of the net earnings may inure to the benefit of private shareholders or individuals. The Board reached the conclusion that petitioner's earnings inured to the benefit of its members; such conclusion was predicated on a series of primary findings that (R. 182-183):

(1) Petitioner's members received the lists of products and petitioner's other publications.

(2) The information which petitioner communicated to its members relieved them of making tests in their own behalf.

(3) Information given to members was related and germane to their business endeavors. Because of their business interests, most of the members received a peculiar and additional benefit which was different from that received by the public in general.

(4) Petitioner's activity brought about a reduction of rates for fire insurance, which led to an increased volume of business and thereby greater earnings for insurance companies.

(5) If petitioner's operations were not for the special benefit of the insurance companies involved, it is not likely that they would have financed the National Board's early research work and "would not have obligated themselves to pay assessments and dues" for petitioner's operating expenses.

(6) Petitioner's charter implies that the members had a personal and private interest; it provides that in case of cessation of membership, the member's interest in the corporation, its property, or the use of its property terminates.

These primary findings are shot through with error and are absolutely contrary to substantial evidence; in consequence, the Board's conclusion that petitioner's earnings inured to the benefit of its members is erroneous. The error on this branch of the test for exemption is doubly serious because of the interrelationship of the two branches of the test. The effect of petitioner's activities, i. e., where the benefits fall, has a profound consequence in determining the purpose of the activities. The Board's erroneous conclusion that benefits inured to members cast such a gloss on the first branch of the test as to contribute materially to the Board's failure to reach the conclusion required by the evidence on the issue of petitioner's purpose.

The errors in these primary findings are clear and unmistakable.

For instance, the first finding is that petitioner's members received the card system classifying the products tested and the annual lists of manufacturers and their approved products, and other publications (R. 182). The evidence is that the standards and specifications are available to persons interested (Ex. B, Ex. 11). The evidence is that the listing cards are distributed to some 200 or 250 subscribers and that interested persons desiring the cards may subscribe to this service at an annual charge to cover printing and mailing costs (R. 35, 36; Ex. B, p. 11). The evidence shows that the lists of inspected appliances and equipment are supplied on request to anyone who wants them; various organizations have standing orders for supplies of the lists. They are distributed to manufacturers named in the lists, to technical societies, to a large list of state, federal and municipal authorities, and to the technical representatives of a great many property owners for their information in equipping their premises to prevent fires and accidents (R. 87). The bulletins of research are sent out to a general mailing list which includes from four to six thousand names, depending on the subjects covered in the particular bulletin. These go to various state, municipal and federal organizations, chiefs of supply departments, various manufacturers who are likely to be concerned with the subject, the technical press, and various groups and subdivisions of the fire insurance business (R. 34). These mailing lists include electrical inspection authorities, manufacturers concerned, property owners, architects, technical trades, state, federal and municipal authorities likely to be interested in the subject (R. 125). Petitioner distributes what it calls data cards, consisting of information concerning fire hazards or fire protection performance, condensed on a classified card. These cards do not name proprietary products. These cards are circulated

to mailing lists which include the members and associate members of the corporation, a number of insurance organizations and people, various electrical inspection and fire departments, state, federal and municipal employees, some technical press (R. 40; Ex. 1). The evidence includes no detail as to the circulation of miscellaneous publications; there is no proof of their distribution to members nor to anyone else.

The evidence is thus clear and uncontradicted that members are not the special recipients of any of petitioner's publications whatever. In fact, the evidence does not show that *any* publications went to members except the data cards; these were received by the members, who were on mailing lists which also included "a number of insurance organizations and people, various electrical inspection and fire departments, state, federal and municipal employees, some technical press" (R. 40).

The Board said that petitioner's work, the results of which were communicated to its members by means of its publications and otherwise, relieved them of making such tests in their own behalf (R. 183). We have just pointed out that there is absolutely no proof that any publications (except the general data cards) went to members. The Board did not say what it meant by communicating results to members "otherwise" and there is nothing in the evidence to throw light on the point. There is nothing in the evidence to suggest that petitioner's members in particular would want to make such tests as petitioner made, and nothing in the evidence to the effect that they were relieved of making such tests.

The Board said, "The information given to members was related and germane to their own business endeavors. Most of the members, because of their business interests, received a peculiar and additional benefit which was dif-

ferent from that received by the public in general" (R. 183). Besides the total lack of evidence that information was given to members, there is no proof to support the other statements in the finding. It clearly appears that information developed by petitioner has no particular utility in writing insurance or in adjusting losses except as it may serve to diminish losses; in such case the insured benefits before the insurer does. Moreover, the Board's apparent assumption that petitioner's members are insurance companies is contrary to the evidence. The regular members are individuals and the National Board; the associate members are individuals (Ex. 6 and 7). If the Board was referring to the insurance company members of the National Board, it is sufficient to say that they were not members of petitioner. Furthermore, any "benefits" flowing to them would flow by reason of their membership in the National Board, an exempt organization (Ex. 5). As for the "peculiar and additional benefit," even to the stock fire insurance company members of the National Board, the evidence is contrary to the Board's finding. The evidence is "* * * the results of the work and tests of these developments of the Underwriters' Laboratories are available to practically the entire public if they are interested in it. It is equally available to mutual insurance companies. * * * The information is likewise available to the reciprocal insurance companies, to states and municipalities who are self-insurers, and to all groups of that kind, self-insurers and non-insurers. The work is also available to major corporate self-insurers or partial self-insurers." (R. 46)

The Board said, "Although a reduction in rates for fire insurance resulted from the activities of petitioner and its predecessors, such reduction undoubtedly led to an increased volume of business and thereby greater earnings for the insurance companies." (R. 183) Petitioner sincerely

hopes that its activities have served to diminish losses from hazards and that the reduced loss experience has led to reduced rates, although there was no proof made thereof in this proceeding. The Board failed to realize that such a result would benefit the insuring public far more than it would insurance companies. The Board's unsupported surmise of an increased volume of business might be exactly wrong; it is just as reasonable to assume that petitioner's activities may reduce hazards to the point where property owners will "carry their own insurance," and lead to decreased earnings for insurance companies. At any rate, there is no evidence as to an increased or decreased volume of business or as to earnings of insurance companies.

The Board found indication of special benefit to "the insurance companies involved" in its finding that they "obligated themselves to pay assessments and dues" to support petitioner's work (R. 183). The evidence is to the contrary. Section 2 of Article I of the by-laws (Exhibit A to the Stipulation of Facts) says that an "assessment for dues" may be levied against regular members. Individuals and the National Board are the regular members; no insurance company is a member and no insurance company could be called on to pay dues. There is no mention of assessments in addition to dues—no provision for "assessments *and* dues" such as the Board mentioned. And there is nothing anywhere in the record whereby anyone has "obligated" himself or itself to pay anything whatever.

The Board said the charter implied that petitioner's members had a personal and private interest, quoting from a charter provision that in case of expulsion, death or resignation the member's interest "in the corporation, its assets or property or the use and application thereof" terminates (R. 183). (See the last sentence in Fourth paragraph of Articles, Exhibit A to the Stipulation of Facts.) This is not an implication that members had an interest in

petitioner's property, but is a clear statement that they had no interest. The charter provides that no distribution of income or property shall ever be made, it provides that upon dissolution petitioner's property goes in trust for furtherance of its objects, and it provides that a departing member may take nothing with him.

With each of the six primary findings thus unsupported by any evidence or wholly contrary to substantial evidence, there is no basis for the Board's second conclusion, that earnings of petitioner inured to its members. Failure of the circuit court to reject the conclusion calls for an exercise of this Court's power of supervision.

CONCLUSION.

For the foregoing reasons, it is urged that this petition for certiorari be granted.

Respectfully submitted,

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August, 1943.

APPENDIX.

Treasury Regulations 94 (promulgated under the Revenue Act of 1936):

ART. 101(6)—1. Religious, charitable, scientific, literary, and educational organizations and community chests.--In order to be exempt under section 101(6), the organization must meet three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

Corporations organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that a corporation established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily deprive it of exemption.

An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an educational organization within the meaning of the Act.

Since a corporation to be exempt under section 101(6) must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also manufactures and sells articles to the public for profit, is not exempt under section 101(6) even though its prop-

erty is held in common and its profits do not inure to the benefit of individual members of the organization. See section 101(18) as to religious or apostolic associations or corporations.

A corporation otherwise exempt under section 101(6) does not lose its status as an exempt corporation by receiving income such as rent, dividends and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in that section.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

ART. 101(7)—1. Business leagues, chambers of commerce, real estate boards, and boards of trade.--A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of the law and is not exempt from tax.

So far as pertinent here, Treasury Regulations 101, promulgated under the Revenue Act of 1938, are the same.

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548372—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

Nos. 241, 242

UNDERWRITERS' LABORATORIES, INCORPORATED, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 167–192) is reported in 46 B. T. A. 464. The opinion of the Circuit Court of Appeals (R. 207–212) is reported in 135 F. 2d 371.

JURISDICTION

The judgments [1] of the Circuit Court of Appeals

[1] These are two cases involving identical issues for different tax years which were consolidated for hearing and decision by the court below (R. 198).

were entered on May 7, 1943 (R. 212–213). The petition for writs of certiorari was filed on August 6, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is exempt from income and excess-profits taxes (a) under Section 101 (6) of the Revenue Acts of 1936 and 1938 because it is operated exclusively for educational or scientific purposes, or (b) under Section 101 (7) of the Revenue Acts of 1936 and 1938 because it is a business league, not organized for profit.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*.

STATEMENT

The facts found by the Board of Tax Appeals may be summarized as follows:

The National Board of Fire Underwriters, an association of capital stock fire insurance companies, was organized in 1866. Part of the activity of the National Board included investigations and research to reduce hazards and insurance risks. In 1893 the use of electricity for lighting came into use and fire insurance companies were concerned about the resulting fire hazards. The National Board thereupon financed Underwriters' Laboratories of Illinois to carry on the research activities of the National Board on a substantially

enlarged basis. (R. 170.) The taxpayer was organized under the laws of Delaware as a nonstock, nonprofit corporation, on October 31, 1936, in order to carry on the activities of the Illinois Company, acquiring its assets and assuming its liabilities on November 5, 1936 (R. 168–170).

Its certificate of incorporation sets forth in substance the following purposes among others (R. 168–169): (1) To determine the relation of materials to life, fire, and casualty hazards, by scientific investigation, study, and experiment, and to publish standards, classifications, and specifications for materials affecting such hazards. (2) To contract with manufacturers and others for examination of materials with reference to life, fire, and casualty hazards and to report and circulate the results to insurance organizations, and other interested parties, and the public, by the publication of lists and descriptions of tested materials and by the provision for the attachment of certificates or labels thereto. (3) To purchase, operate, and maintain laboratories and equipment and to finance, subsidize, and endow scientific research, looking to the discovery of materials to protect life and property from fire, crime, or casualty and to publish and circulate the result of such investigation and research.

The taxpayer is managed by 15 trustees, elected by the regular members, all of whom are officers of stock fire insurance companies except two who are the president of the taxpayer and the general

manager of the National Board. There are 17[2] regular members, consisting of the original incorporators, the National Board, and officials of the National Board or any company member thereof elected by the regular members. The National Board has one vote for each of its 198 stock fire insurance company members. Associate members, of which there are 91, are elected by the Board of Trustees, but only regular members may vote (R. 170–172).

The taxpayer's principal activity is the examination, testing, classification, and inspection, for manufacturers who request it, of devices, systems, and materials which they manufacture with reference to life, fire, crime, and casualty hazards, for which the taxpayer makes charges based on the volume and extent of the work. The taxpayer refuses its services to purchasers or prospective purchasers. If an article cannot be recommended, only the manufacturer is told; if, however, the product tested meets taxpayer's standards, a report is made to some 250 subscribers of taxpayer's card service, which include the regular and associate members. The information on the cards is later summarized in the listings published in book or pamphlet form, which are supplied to anyone on request. Those to whom they are distributed include manufacturers of products listed

[2] Apparently the Board's statement that there are 77 (R. 171) is a misprint. See Exhibit 7.

therein, federal, state, and municipal departments, including fire chiefs, inspection bureaus, officials in charge of public property, insurance companies, architects, and others. Similarly, taxpayer publishes and distributes card listings at cost according to classifications of listed products, which are maintained in cabinets at the offices of the principal boards of underwriters and inspection bureaus, at many offices of insurance companies, in certain governmental departments, and at headquarters of taxpayer's representatives. The regular and associate members of taxpayer also receive these cards. (R. 172–173.)

Listings of products after approval is conditioned upon an agreement by the manufacturer for one of three standard forms of the taxpayer's continuing inspection service. Agreement entitles the manufacturer to purchase labels bearing the words "Underwriters' Laboratories, Inspected." The charge varies according to the nature and extent of inspection. (R. 173.)

Taxpayer distributes pamphlets calling attention to its testing facilities and the significance of its labels. It similarly circulates a 43-minute motion-picture film showing the operation of its Chicago laboratory. It distributes, at the expense of manufacturers, reports on approved articles of manufacturers containing taxpayer's findings and the manufacturer's claim as to the merits of the product involved. (R. 174.) Taxpayer

also distributes research bulletins pertaining to standards and methods used in tests. Most, if not all, of the bulletins deal with data pertaining to tests made for manufacturers. (R. 173–174.)

When the taxpayer was organized in 1936, it received assets of its predecessor company of $1,156,019 and assumed liabilities of $201,230. (R. 170.) Almost all of its income during the tax years was derived from fees collected from manufacturers for testing, inspection, and label services. This amounted to $1,739,352 in 1937 and $1,622,789 in 1938, excluding refunds to label customers of $80,834 in 1937 and $25,303 in 1938. These amounts, together with about $15,000 in interest and dividends in each year, resulted in net income in 1937 and 1938 of $183,339 and $105,042, respectively. (R. 174–175.)

The taxpayer has never paid any dividends to its members. (R. 175.)

The Board of Tax Appeals found that the taxpayer was not a charitable, educational, or scientific organization or a business league within Section 101 (6) and (7) of the Revenue Acts of 1936 and 1938 (R. 176), and accordingly denied exemption (R. 177–188). The Circuit Court of Appeals affirmed the Board (R. 212).

ARGUMENT

Although the ultimate issue of exemption under Sections 101 (6) and 101 (7) of the Revenue Acts of 1936 and 1938 (Appendix, *infra*) is a

mixed question of law and fact, the taxpayer's claim to exemption here rests largely on factual issues. In substance, the complaint is that the Board of Tax Appeals failed to find that the taxpayer was organized to engage and did engage in scientific research and educational activities for the benefit of the public. The legal arguments are based on the assumption that it was organized and operated for such purposes.

The test of exemption under Section 101 (6) which both the Board and the Circuit Court of Appeals applied is whether or not the taxpayer was organized and operated exclusively for scientific and educational or other exempt purposes. The Board found (R. 182–183) that the taxpayer conducted tests and experiments for manufacturers at their expense in order to obtain information vital to the conduct of the businesses of the taxpayer's insurance company members rather than for the public interest, as the taxpayer contended, and accordingly held that it was not exempt under Section 101 (6). The Board further found that the taxpayer was conducting a business of a kind ordinarily carried on for profit (R. 186)—that is, a commercial testing laboratory (R. 212)—and hence held that it was not exempt as a business league under Section 101 (7) and Article 101 (7)–1 of Treasury Regulations 94 and 101 (Appendix, *infra*), the validity of which is not challenged by the taxpayer.

The court below accepted the Board's findings. In substance, it determined that the evidence did not compel the conclusion or inference that the taxpayer was engaged in scientific and educational activities for the benefit of the public and that, on the contrary, it supported the conclusions and inferences which the Board had drawn. The court's review of the issues of fact was in accord with the rules governing judicial review of the Board's decision. *Wilmington Co.* v. *Helvering,* 316 U. S. 164. There is not only substantial evidence but, as the court below said (R. 212), "there was an abundance of evidence to support the Board's findings." It may well be doubted whether other conclusions were possible.

On the basis of the findings made, no substantial question of law as to the exemption under either section arises. It would seem obvious that an organization established and operated to obtain information vital to the conduct of the businesses of the members of the organization is not a scientific or educational corporation within the meaning of Section 101 (6). Cf. *Jockey Club* v. *Helvering,* 76 F. 2d 597 (C. C. A. 2d).

The Regulations expressly deny exemption, under Section 101 (7), as a business league to a business ordinarily carried on for profit. The validity of the Regulations has not been challenged here and has been sustained in other cases. *Retailers Credit Ass'n* v. *Commissioner,* 90 F.

2d 47 (C. C. A. 9th); *Uniform Printing & S. Co.* v. *Commissioner,* 33 F. 2d 445 (C. C. A. 7th); and *Park West-Riverside Associates, Inc.* v. *Commissioner,* 110 F. 2d 1022 (C. C. A. 2d), affirming *per curiam* unreported memorandum opinion of the Board of Tax Appeals dated June 2, 1939.

The court below did not hold that exemption should be denied on the ground that net earnings inured to the benefit of any individual; hence its decision cannot be said to be in conflict with other cases dealing with that question.[3] Nor is the Board's decision in conflict with *United States* v. *Proprietors of Social Law Library,* 102 F. 2d 481 (C. C. A. 1st), contrary to taxpayer's contention (Pet. 10–13). That case involved very different facts. The law library held to be exempt as an educational corporation provided services for public officials, members of the bar, and other members of the community and was supported by dues and public funds. The district court found

[3] The Board's conclusion that net earnings inured to insurance companies in the form of services necessary to the conduct of the businesses of the insurance companies, however, is consistent with the decisions of other courts. See *Northwestern Municipal Ass'n, Inc.* v. *United States,* 99 F. 2d 460 (C. C. A. 8th); *Northwestern Jobbers' Credit Ass'n* v. *Commissioner,* 37 F. 2d 880 (C. C. A. 8th); *Retailers Credit Ass'n* v. *Commissioner,* 90 F. 2d 47 (C. C. A. 9th); *Durham Merchant's Ass'n* v. *United States,* 34 F. Supp. 71 (M. D. N. C.); *Adjustment Bureau of St. Louis Credit Ass'n* v. *Commissioner,* 21 B. T. A. 232.

that the library was organized and operated for educational purposes, and the Circuit Court of Appeals held that exemption was not to be denied because net earnings were invested in improvements and the improvements were of special benefit to its members. The case does not support the view that net earnings in the form of services cannot be said to have inured to the benefit of members of such an organization as is involved here.

Neither the Board nor the court below denied exemption because taxpayer purposely made large profits while purporting to operate at cost (R. 180–181,. 210) but considered it as one of many factors in arriving at taxpayer's purpose. Thus the decision is not inconsistent with that of this Court in *Trinidad* v. *Sagrada Orden,* 263 U. S. 578. In that case it was stipulated that taxpayer was organized for religious purposes, and this Court held that income devoted to the exempt purpose but derived from real estate and stock owned by the corporation and from the sale of wine and chocolate within the organization did not destroy the exemption, whereas in the instant case it was found that there was not an exempt purpose. Similarly, *Roche's Beach, Inc.* v. *Commissioner,* 96 F. 2d 776 (C. C. A. 2d); *Koon Kreek Klub* v. *Thomas,* 108 F. 2d 616 (C. C. A. 5th); *Santee Club* v. *White,* 87 F. 2d 5 (C. C. A. 1st); and *Crooks* v. *Kansas City Hay Dealers' Ass'n,* 37 F.

2d 83 (C. C. A. 8th) are not inconsistent with the instant case, because in each an exempt purpose was established on facts in no way comparable to those here involved.

CONCLUSION

The decision below is correct and presents no principle applicable beyond the particular facts involved. There is no conflict. The petition should be denied.

Respectfully submitted.

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AUGUST 1943.

APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> SEC. 101. EXEMPTIONS FROM TAX ON CORPORATIONS.
>
> The following organizations shall be exempt from taxation under this title—
>
> * * * * *
>
> (6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;
>
> (7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
>
> * * * * *

Section 101 (6) and (7) of the Revenue Act of 1938, c. 289, 52 Stat. 447, are identical to Section 101 (6) and (7) of the Revenue Act of 1936, as set out above.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

> ART. 101 (6)–1. *Religious, charitable, scientific, literary, and educational organi-*

zations and community chests.—In order to be exempt under section 101 (6), the organization must meet three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

Corporations organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that a corporation established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily deprive it of exemption.

An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an educational organization within the meaning of the Act.

Since a corporation to be exempt under section 101 (6) must be organized and operated exclusively for one or more of the specified purposes, an organization which

has certain religious purposes and which also manufactures and sells articles to the public for profit, is not exempt under section 101 (6) even though its property is held in common and its profits do not inure to the benefit of individual members of the organization. See section 101 (18) as to religious or apostolic associations or corporations.

A corporation otherwise exempt under section 101 (6) does not lose its status as an exempt corporation by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in that section.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

ART. 101 (7)-1. *Business leagues, chambers of commerce, real estate boards, and boards of trade.*—A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for

profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of the law and is not exempt from tax.

Articles 101 (6)–1 and 101 (7)–1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, are identical to Articles 101 (6)–1 and 101 (7)–1 of Treasury Regulations 94, as set out above.

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